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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,396	01/10/2002	Angela M. Petroskey	AMP 0101 PUS	4654
7590 11/02/2004			EXAMINER	
Artz & Artz, P.C. Ste. 250 28333 Telegraph Road Southfield, MI 48304			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,396

Applicant(s)

PETROSKEY, ANGELA M.

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the specification as filed, for the last paragraph of claim 11, which recites "at least the top portion deforming when the blocking pad is contacted by a volleyball so as to minimize a torque applied to a user's wrist".

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 8-12, 14, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner (5,564,122).

Regarding claim 1, Wagner discloses a training device comprising a front layer (front thin foam layer 12), a rear layer (back or rear Styrofoam layer 10) and an insert portion (hard plastic layer 11) of relatively stiff material (it is made of hard plastic) disposed between the front

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and rear layer, and a hand-receiving portion (glove 5) to allow receipt of a user's hand (see figure 6); said hand receiving portion (glove 5) being smaller than the front layer and covering a substantial portion of the user's hand to maintain it in a generally fixed position; wherein said hand receiving portion is a glove (see column 2, lines 29-33); whereby said hand receiving portion (glove 5) is attached to a base portion (the broadest reasonable interpretation of base portion would include the inner surface 5a of the blocker 1) of said outer covering.

With respect to claim 2, statements of intended use are not accorded any weight when the structure is anticipated. See In re Schreiber, 44 USPQ 2nd 1429.

Regarding claim 3, Wagner shows the insert portion (11) to be made of plastic material (see column 2, lines 60 and 61).

Regarding claim 4, Wagner shows the front layer (12) and the rear layer (10) to be made of foam material (see column 2, lines 56-60).

Regarding claim 5, Wagner shows the rear layer to be made of two layers of Styrofoam and the front layer to be a thin foam layer (see column 2, lines 56-60; and best seen in figure 6).

Regarding claims 8 and 9, Wagner shows a covering surrounding the front, rear and insert portion, wherein the covering is made of fabric material (see column 2, lines 61-63; also figure 6).

Regarding claim 10, Wagner shows the hand-receiving portion is a glove (see column 2, lines 29-31).

Regarding claim 11, note the rejection for claims 1, 4, 5 and 10. It should be noted that the preamble, A volleyball blocking pad, does not limit the structure of the claimed device

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because the portion of the claim following the preamble is a self-contained description of the structure and does not depend on the preamble for completeness.

Additionally, Wagner shows a top portion (upper end 6) that is distal to a base portion (lower end 7), at least the top portion deforming (see figure 6 which shows the construction of the blocker; as it is clearly shown the angled upper area 3 comprises deformable material which absorb the impact of the puck or ball, although it is not explicitly stated but implied that, upon impact of the puck or ball the angled upper area 3 of the blocking pad deforms, which inherently minimizes a torque applied to the user's wrist.

Regarding claim 12, note the rejection for claim 4.

Regarding claim 14, note the rejection for claim 5.

Regarding claim 17, note the rejection for claim 10.

Regarding claim 18, note the rejection for claim 11.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 7, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (5,564,122).

Regarding claim 6, Wagner shows the insert portion (11) is made of hard plastic. As it is well known in the plastic art, all plastics provide in combination some degree of flexibility and

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rigidity. The degree of flexibility and rigidity vary depending on the shore hardness value of the plastic.

Regarding claim 7, Wagner is silent as to the means for securing front, rear and insert together. Various means are well known in the relevant art. Absent a showing of new or unobvious results it would have been obvious to use any well known means including glue for securing the various layers of Wagner's training device, the motivation being so that the layers remain securely in place upon impact.

Regarding claim 13, note the rejection for claim 6.

Regarding claim 15, note the rejection for claims 2 and 6.

Regarding claim 16, Wagner does not expressly indicate that the covering (13) is removable, but shows the cover to be closed at the upper end by lacing (14); as best seen in figure 6, the cover is removably attached.

Response to Arguments

6. Applicant's arguments filed 25 August 2004 have been fully considered but they are not persuasive. With regards to the newly added limitation "whereby said hand-receiving portion is attached to a base portion of said outer covering", the broadest reasonable interpretation of base portion would include the inner surface 5a, which is a supporting part or layer, positioned on the base or backside of the blocker. With regards to applicant's remarks on "the position of the hand-receiving portion with respect to the base portion of the training device", such remarks were not included in the application as filed. Applicant had not indicated that the position of the hand-receiving portion posed any criticality to the performance of the invention.

With regards to applicant's assertion that the Wagner patent teaches a blocking pad and glove having a backhand side that is attached to the blocking pad. Such assertions are not understood, since the Examiner has found no support in the Wagner reference for applicant's assertions. With regards to applicant's remarks that "at least the top portion deforming when the blocking pad is contacted by a volleyball so as to minimize a torque applied to a user's wrist", there is no support in the specification as filed for this limitation. In any event The Wagner patent shows that the upper area of the blocker is capable of deflection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kleinert (CA 2,407,113A1); McSherry (WO 02/34340A1)
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
29 October 2004


MITRA ARYANPOUR
PATENT EXAMINER
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